

Civil Service Rule 4-6

Disbursements for Personal Services

As amended and approved by the Civil Service Commission
on September 27, 2000, effective immediately

Rule 4-6: Disbursements for Personal Services

4-6.1 Definitions. As used in these rules:

- (a) ***Contract for personal services*** means a contract between a state agency and a contractor pursuant to which the state agency is obligated to make disbursements from appropriated funds for the personal services of persons who are not classified employees of the state.
- (b) ***Contractor*** means an individual or organization that enters into a contract for personal services. For the purposes of this rule, there are two types of contractors:
 - (1) ***Independent contractor*** means an individual contractor or an employee of a contractor who provides personal services and who is not an employee of the state of Michigan.
 - (2) ***Special personal services employee*** means a contractor who is an employee of a state agency and who is not a classified employee, an exempt employee, or an excepted employee.
- (c) ***Interested party*** means a party that files a request or a written appearance in the civil service staff review of a request.
- (d) ***Mixed contract*** means a contract that authorizes disbursements both for personal services and for things that are not personal services.
- (e) ***Party*** means any of the following persons or organizations:
 - (1) An appointing authority that files a request to contract for personal services.
 - (2) An exclusive representative of a classified employee who has a direct interest in the technical decision.

- (3) A nonexclusively represented classified employee who has a direct interest in the technical decision.
 - (4) A limited recognition organization appearing on behalf of a classified employee who has a direct interest in the technical decision.
 - (5) The office of the state employer.
 - (6) Any other person or organization (1) with a demonstrable special interest in the technical decision (2) who petitions to participate in the civil service staff review and (3) who is authorized by the department of civil service to participate in the review.
- (f) **Personal services** means work performed for the direct benefit of the state by an individual for compensation.
- (g) **Request** means a request submitted by an appointing authority to the department of civil service under rule 4-6.6, for approval to make disbursements for personal services to a person who is not a classified state employee, or under rule 4-6.8, to add personal services to the preauthorized list.

4-6.2 Disbursements of Personal Services.

- (a) **Requirements.** An appointing authority shall not make or authorize disbursements under a contract for personal services until the provisions of article 11, section 5, of the constitution, these rules, and regulations issued by the state personnel director have been complied with in every particular.
- (b) **Disapproval by state personnel director.** If an appointing authority makes or authorizes disbursements for personal services in violation of article 11, section 5, of the constitution or an applicable civil service rule or regulation, the state personnel director may disapprove any further disbursements by written order. If an appointing authority fails or refuses to comply with an order of the director, the director is authorized to take all appropriate action, including filing a civil action, to compel compliance with the disapproval order.

4-6.3 Standards for Disbursements for Personal Services. An appointing authority may make or authorize disbursements for personal services under a contract for personal services only if the personal services meet one or more of the following standards:

- (a) **Standard A.** The personal services are so temporary, intermittent, or irregular in nature that they cannot be provided efficiently through the classified service.
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- (b) **Standard B.** The personal services are uncommon to the state classified service because they are so specialized, technical, peculiar, or unique in character that the talent, experience, or expertise required to accomplish the duties and responsibilities cannot be recognized as normal to the state service and cannot be efficiently included in the classification plan.
- (c) **Standard C.** The personal services involve (1) the use of equipment, materials, or facilities not reasonably available to the agency at the time and place required and (2) the estimated cost to the agency in procuring such equipment or materials and establishing the needed positions would be disproportionate to the contract cost.
- (d) **Standard D.** The personal services would be obtained at substantial savings over the proposed period of disbursements when compared with having the same personal services performed by the classified work force. The personal services do not meet this standard if, despite the savings over the proposed period of disbursements, substantial savings would not likely be realized over the long term. Savings are “substantial” if the average annual savings over the proposed period of disbursements are equal to or greater than the minimum required savings computed using the table below:

Col. 1		Col. 2
Average Annual Cost of Contracting:		Minimum Required Average Annual Savings Must Equal:
<i>From:</i>	<i>To:</i>	
\$1	\$25,000	25 % of avg. annual cost
25,001	50,000	20 % (minimum \$6,250)
50,001	100,000	15 % (minimum \$10,000)
100,001	200,000	12.5 % (minimum \$15,000)
200,001	500,000	10 % (minimum \$25,000)
500,001	1,000,000	Minimum \$50,000
1,000,001	and above	5 % of avg. annual cost

- (e) **Standard E.** The personal services in the request will be included in a mixed contract that meets each of the following:
- (1) The mixed contract will be predominantly for things other than the performance of personal services.
 - (2) The personal services to be included are logically or practically related to the predominant nature of the contract.

4-6.4 Disbursements to Special Personal Service Employees. An appointing authority may make disbursements for personal services to a special personal services employee under the following conditions:

- (a) **Standards.** The personal services meet either Standard A or Standard B in rule 4-6.3.
- (b) **Procedures.** The disbursements for personal services have been (1) approved under the request procedures in rule 4.6.6 or (2) preauthorized under rule 4-6.8.

4-6.5 Disbursements to Independent Contractors. An appointing authority may make disbursements for personal services to an independent contractor under the following conditions:

- (a) **Standards.** The personal services meet one or more of the standards in rule 4-6.3.
- (b) **Procedures.** The disbursements for personal services have been (1) approved under the request procedures in 4-6.6, (2) authorized under the decentralized review and approval procedures in rule 4-6.7, or (3) preauthorized under rule 4.6.8.

4-6.6 Procedure: Prior Written Approval by Civil Service Staff. An appointing authority may submit a request for approval to the department of civil service. Civil service staff shall (1) receive and evaluate the request, (2) receive and evaluate information submitted by other interested parties, and (3) issue a written technical decision. The staff shall approve the request, with or without conditions, or deny the request.

(a) **Effective date of staff decision.**

- (1) **One interested party.** If the appointing authority is the only interested party participating in the staff review, the technical decision is effective upon its issuance, unless a later date is specified in the technical decision.
 - (2) **Two or more interested parties.** If more than one interested party participates in the staff review, the technical decision shall be effective fourteen (14) calendar days after the date the technical decision is issued, unless a different date is specified in the technical decision. An interested party intending to appeal the technical decision may file a request that the state personnel director stay the effective date of the decision pending appeal. The director may stay the effective date of the technical decision pending a technical appeal if the director determines that (1) it is unlikely that the request meets one or more of the standards for approval and (2) a stay is in the best interest of the classified service.
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- (b) **Appeal of technical decision.** An interested party who participated at the staff review may file a technical appeal as provided in rule 2-20B. The appeal must be received by the department of civil service and all other interested parties within fourteen (14) calendar days after the date the technical decision is issued.

4-6.7 Procedure: Decentralized Approval without Prior Civil Service Review. An appointing authority may make or authorize disbursements for personal services if the appointing authority documents its compliance with civil service rules and regulations prior to making any disbursements and the appointing authority gives notice of the contract or disbursements to the department of civil service, to employees, and to exclusive representatives of employees.

- (a) **Training required.** An appointing authority shall not use the decentralized approval procedure until the department of civil service certifies in writing that the staff of the appointing authority has received adequate training in the required procedures. The department may also require additional periodic training at any later date to ensure continued compliance with the rules and regulations as a condition of the use of the decentralized approval procedure.
- (b) **Documentation required.** The appointing authority shall document each of the following prior to making any disbursements:
- (1) The standard or standards in rule 4-6.3 that the personal services meet.
 - (2) Details of the proposed contract that are sufficient to demonstrate clearly how the personal services meet one or more of the standards in rule 4-6.3.
 - (3) Any further documentation required in the regulations.
 - (4) A copy of each contract executed or effective as a result of this approval.
- (c) **Maintenance of records.** The appointing authority shall maintain the documents required by this rule for a period not less than two years after the end of the contract. The documents shall be made available to the department of civil service for purposes of auditing compliance.
- (d) **Notice.** As a condition of the use of the decentralized approval procedure, the appointing authority shall complete a form prescribed by the department of civil service and send a copy of the completed form to the department of civil service at least 14 calendar days before the contract is executed. At the same time, the appointing authority shall also post notice of the proposed contract in a central public location.

- (e) **Limitations.** Notwithstanding any other rule or regulation to the contrary, an appointing authority shall file a request and obtain prior civil service approval as required in rule 4-6.6 before making or authorizing disbursements for personal services in any of the following circumstances:
- (1) **Layoff of classified employee.** One or more classified employees will be laid off or demoted as a result of the contract for personal services.
 - (2) **Contract amount.** The disbursements for personal services may exceed \$500,000 in any one fiscal year or \$2,000,000 during the life of the contract.
 - (3) **Number of contracts.** The appointing authority has or will enter into six (6) or more separate contracts for substantially the same personal services in one fiscal year.
- (f) **Complaints.** Any complaint regarding the use of the decentralized review and approval process by an appointing authority may be brought only under the complaint procedures in rule 4-6.10.

4-6.8 Procedure: Preauthorization. The department of civil service may establish and publish a list of personal services deemed to meet one or more of the standards of rule 4-6.3 without further review.

- (a) **Use of preauthorized approval.** An appointing authority may make or authorize disbursements for any preauthorized personal services without submitting a request or obtaining prior written approval of the department of civil service.
 - (b) **Reporting.** As a condition of using the preauthorized list, the appointing authority shall report all disbursements for preauthorized personal services as required by statute and civil service regulations.
 - (c) **Additions to preauthorized list.** An appointing authority seeking to add personal services to the list of preauthorized personal services may file a request under the procedures in rule 4-6.6.
 - (d) **Complaints or appeals.** Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process may be brought only under the procedures authorized in rule 4-6.10. Any complaint regarding a technical decision to add personal services to the preauthorized list may be brought only by an interested party under the technical appeal procedures in rule 2-20B.
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4-6.9 Emergency Disbursements. An appointing authority may authorize or make disbursements for personal services by persons who are not classified employees without prior approval when an emergency occurs. The services shall not continue beyond fourteen (14) calendar days without approval of the department of civil service. The department may approve continuation of emergency services for an additional period not to exceed twenty-eight (28) calendar days.

4-6.10 Complaints and Investigations.

- (a) **Investigation by state personnel director.** Any person may file a written complaint with the state personnel director that a contract for personal services has been awarded by an appointing authority in violation of article 11, section 5, of the constitution or a civil service rule or regulation. The complainant shall also serve a copy of the complaint on the appointing authority and the office of the state employer. If the state personnel director determines that there is a meritorious basis for the complaint, the director shall appoint a person to conduct an inquiry and make a recommendation to the director.
- (b) **Violations.** If the state personnel director finds any of the following circumstances, the director may disapprove disbursements for personal services or take other appropriate action to ensure compliance with the constitution and the rules and regulations:
- (1) The appointing authority has entered into a contract for personal services without obtaining required civil service approval.
 - (2) The appointing authority obtained civil service approval by fraud, material misrepresentation, or failure to disclose material facts.
 - (3) The appointing authority made or authorized improper disbursements for personal services under the decentralized review and approval procedure or the list of preauthorized personal services.
 - (4) The appointing authority failed or neglected to report a contract or disbursements as required by law, civil service rule, or civil service regulations.
 - (5) The appointing authority failed to create or maintain adequate records to properly document its compliance with these rules and the regulations.
- (c) **Appeal of director's determination.** A determination of the state personnel director under this rule shall be final unless the appointing authority files an application for leave to appeal to the employment relations board within fourteen (14) calendar days after the date of mailing of the director's determination. Thereafter, the appeal procedures of the employment relations board shall control.
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4-6.11 Audit and Enforcement. The department of civil service shall periodically audit an appointing authority to ensure that the appointing authority is complying with civil service rules and regulations governing disbursements for personal services. If the state personnel director determines that an appointing authority has not substantially complied with the rules and regulations, the state personnel director is authorized (1) to require the appointing authority to file a written request and to obtain prior written approval from the department of civil service for all disbursements for personal services and (2) to take such other action as will reasonably ensure that the appointing authority complies with the rules and regulations in the future.

4-6.12 Contract Requirements. Every contract for personal services shall contain a provision that the state is obligated to comply with article 11, section 5, of the constitution and applicable civil service rules and regulations. The provision shall also give notice that, notwithstanding any other provision of the contract to the contrary, the state personnel director is authorized to disapprove contractual disbursements for personal services if the state personnel director determines that the contract violates article 11, section 5, of the constitution or applicable civil service rules and regulations. The failure of an appointing authority to require such a provision in a contract for personal services shall not limit or restrict the authority of the civil service commission and the state personnel director to disapprove disbursements for personal services.

4-6.13 Limitations.

- (a) **Civil service does not approve contracts.** Nothing in these rules shall relieve an appointing authority of obligations under any other law, rule, or regulation that may apply to a contract for personal services. Approval of a request by the department of civil service under this rule does not, itself, constitute approval of any contract or any agreement by the state of Michigan to be bound by the terms of any contract.
- (b) **Limitation on aggregate disbursements.** Approval of a request by the department of civil service required by these rules only authorizes the appointing authority to make disbursements for personal services to persons outside the classified service for the proposed period of disbursements. The appointing authority shall not make aggregate total disbursements for personal services over the proposed period of disbursements that exceed the total amount approved by the department of civil service without the further approval of the department.